

Remarks

Previously pending claims 47-49 have been renumbered as claims 46-48. All references herein to the same are based on the claims as renumbered. Claims 25-45 and 46 are withdrawn from consideration. Claims 12 and 23 have been amended. Applicant thanks the Examiner for her helpful suggestions regarding the renumbering of claims 47-49. No new matter has been added.

Claims 12, 23, and previously pending claims 48 and 49 (now claims 47 and 48) stand rejected under 35 U.S.C. § 112, second paragraph. Applicant submits that the amendments to claims 12 and 23 render moot the rejection of the same under 35 U.S.C. § 112, second paragraph.

Regarding claims 47 and 48, Applicant submits that the language from claims 47 and 48 that is quoted in the June 20, 2007 Office action refers to a property of the sensor. The sensor must exhibit the recited property. Claiming an invention based on a property is a well accepted practice as established by a long line of legal precedent. See, e.g., M.P.E.P. 2173.05(g) citing *In re Swinehart*, 439 F.2d 210 (CCPA 1971) (“Functional language does not in and of itself render a claim improper”). Therefore Applicant submits that claims 47 and 48 satisfy the definiteness criteria of 35 U.S.C. § 112, second paragraph and respectfully requests that the rejection of claims 48 and 49 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claims 1-5, 12, 13, 47, and 48 stand rejected under 35 U.S.C. § 102(b) over Zentner (U.S. Patent No. 4,814,183) in light of Sharma (U.S. Patent No. 5,610,233).

Zentner discloses a drug delivery device for dispensing a drug to the gastrointestinal tract at a controlled rate (Zentner, col. 1, lines 7-10). The device includes a core compartment that includes a charged resin intimately mixed with a water soluble, diffusible, ionized drug surrounded by a water insoluble semipermeable wall that includes holes (Id., col. 1, lines 12-17). Zentner explains that the drug can be present in the compartment as a mixture with, among other components, a dye (Id., col. 5, lines 65-col. 6, line 1).

Sharma discloses an aqueous coating composition that includes water soluble cellulose esters that are crosslinked with a resin system in the presence of catalyst to form a film (Sharma, col. 1, lines 6-9).

Claim 1 is directed to a sensor for detecting an analyte, the sensor including a core that includes hydrogel, a fluorescence reagent disposed in the core, a semipermeable coating surrounding the core, the semipermeable coating including a polydisperse polymer having a weight average molecular weight from about 4 kDa to about 18 kDa and a polydispersity index greater than 1, and a biocompatible coating surrounding the semipermeable coating. Under 35 U.S.C. § 102(b), the subject matter of a claim is anticipated if each and every element set forth in the claim is found in a single prior art reference. *Verdegaal Bros., Inc., v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). If the reference fails to teach even one limitation of the claimed invention, then the claim is not anticipated under § 102(b). *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984). Zentner discloses that her device can include a drug and further discloses that the drug can be in a compartment mixed with an osmotic solute, binder, buffer, dye, mixtures thereof, and the like (Zentner, col. 5, line 65-col. 6, line 1). Zentner does not teach that the dye is a fluorescence reagent. Dyes are not inherently fluorescence reagents. Therefore, Zentner does not teach, either expressly or inherently, a fluorescence reagent. Zentner thus fails to teach a required element of claim 1.

Sharma does not cure the deficiencies of Zentner. Sharma does not teach a fluorescence reagent and is not cited for such a teaching. In addition, nothing in Sharma establishes that Zentner inherently discloses a fluorescence reagent. As such, a *prima facie* case of anticipation of the sensor of claim 1 has not been established. Accordingly, the rejection of claim 1 under 35 U.S.C. § 102(b) over Zentner is unwarranted and Applicant respectfully requests that it be withdrawn.

Claims 2-5, 12, 13, 47, and 48 are distinguishable under 35 U.S.C. § 102(b) over Zentner in light of Sharma for at least the same reasons set forth above in distinguishing claim 1.

Claims 1-13, 47, and 48 stand rejected under 35 U.S.C. § 102(e) over Wolf et al. (U.S. Publication No. 2003/0170278) in light of Chen et al. (U.S. Publication No. 2003/0229185).

Wolf et al. was filed on March 11, 2002. At the direction of Dr. Wolf, the inventor on the above-captioned application, sensor beads that included an alginate core,

fluorescence reagents disposed in the core, a semipermeable coating surrounding the core, and a biocompatible coating surrounding the semipermeable coating, were prepared prior to the filing date of Wolf et al. (see Declaration of David E. Wolf, Ph.D).

Accordingly, Wolf et al. is not a proper prior art reference against the above-captioned application. Applicant submits, therefore, that the rejection of claims 1-13, 47, and 48 under 35 U.S.C. § 102(e) over Wolf et al. in light of Chen et al. has been overcome and respectfully requests that it be withdrawn.

Claims 6-11 stand rejected under 35 U.S.C. § 103 over Zentner, in light of Sharma, and in view of Tsang et al. (U.S. Patent No. 4,663,286).

The rejection of claims 6-11 under 35 U.S.C. § 103 over Zentner, in light of Sharma, and in view of Tsang et al., is based on the above-refuted premise that Zentner teaches the sensor of claim 1. Since this premise has been refuted, Applicant submits that the rejection of claims 6-11 under 35 U.S.C. § 103 over Zentner, in light of Sharma, and in view of Tsang et al. is likewise unwarranted and cannot stand. Accordingly, Applicant respectfully requests that the rejection of claims 6-11 under U.S.C. § 103 over Zentner, in light of Sharma, and in view of Tsang et al. be withdrawn.

Claims 14-24 stand rejected under 35 U.S.C. § 103 over Zentner, in view of Sharma, and in view of Leung et al. (U.S. Publication No. 2002/0064794).

The rejection of claims 14-24 under 35 U.S.C. § 103 over Zentner, in light of Sharma, and in view of Leung et al., is based on the above-refuted premise that Zentner teaches the sensor of claim 1. Since this premise has been refuted, Applicant submits that the rejection of claims 14-24 under 35 U.S.C. § 103 over Zentner, in light of Sharma, and in view of Leung et al. is likewise unwarranted and cannot stand. Accordingly, Applicant respectfully requests that the rejection of claims 14-24 under U.S.C. § 103 over Zentner, in light of Sharma, and in view of Leung et al. be withdrawn.

Claims 14-19 and 24 stand rejected under 35 U.S.C. § 103 over Wolf et al., in view of Chen, and in view of Chick et al. (U.S. Patent No. 6,040,194).

As established above, Wolf et al. is not a proper prior art reference against the above-captioned application. Accordingly, Applicant submits that the rejection of claims 14-19 and 24 under 35 U.S.C. § 103 over Wolf et al., in view of Chen, and in view of Chick et al. cannot stand and respectfully requests that it be withdrawn.

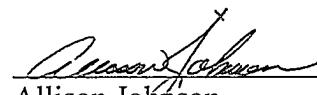
Any statements contained in the June 20, 2007 Office action and not expressly addressed herein are hereby expressly traversed.

The claims now pending in the application are in condition for allowance and such action is respectfully requested. The Examiner is invited to telephone the undersigned should a teleconference interview facilitate prosecution of this application.

Please charge any additional fees that may be required or credit any overpayment made to Deposit Account No. 501,171.

Respectfully submitted,

Date: September 20, 2007



Allison Johnson
Reg. No. 36,173

Allison Johnson, P.A.
Lake Calhoun Executive Center
3033 Excelsior Blvd., Suite 467
Minneapolis, MN 55416
Telephone (612) 929-0700
Facsimile (612) 929-0706